

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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LAWRENCE BARRETT and SHELISE COLON,

**17 CV 6160 (DGL)**

Plaintiffs,

**AFFIDAVIT OF SERVICE**

-against-

THE CITY OF ROCHESTER, a municipal entity, POLICE  
OFFICER WILLIAM BAKER, IBM # 1940 POLICE  
OFFICER JASON P. KELLY, IBM # 1944, POLICE  
OFFICER ORLANDO HERNANDEZ, IBM # 1010,  
POLICE OFFICER BRADDON ELLIOTT, SERGEANT  
MANDI E. WHEELER, and POLICE OFFICERS "JOHN  
DOES 1-10" (names and number of whom are unknown at  
present), and other unidentified members of the Rochester  
Police Department,

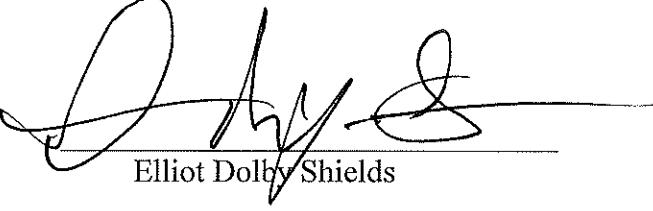
Defendants.

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1. **Elliot Dolby Shields, Esq.** an attorney duly admitted to practice in the State of New York and the Western District of New York, swears under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following statement is true and correct:

2. I am over the age of eighteen years and I reside in the state of New York.
3. On April 11, 2017, I corresponded with the Assistant Corporation Counsel for the City of Rochester, Spencer Ash, Esq., who confirmed that he waived service of the Summons and Complaint upon defendant CITY OF ROCHESTER in the within action. (See Exhibit "A").

Dated: New York, New York  
April 18, 2017



Elliot Dolby Shields

Sworn to before me on this  
18<sup>TH</sup> Day of April 18, 2017



\_\_\_\_\_  
NOTARY PUBLIC

REBECCA PREDOVAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02PR6310842  
Qualified in Queens County  
My Commission Expires 4/2/2018

# **EXHIBIT “A”**

**From:** Ash, Spencer L. [<mailto:Spencer.Ash@CityofRochester.Gov>]

**Sent:** Tuesday, April 11, 2017 6:53 PM

**To:** Elliot Shields <[eshields@rothandrothlaw.com](mailto:eshields@rothandrothlaw.com)>

**Subject:** Re: Barrett v. City of Rochester, et al., 17-CV-6160 (DGL)

The Complaint in the matter is time stamped and electronically filed. Because City attorneys do not handle process service, I had no way of knowing that you did not perfect service. Though the City fully plans to defend and indemnify the individually named officers, we warrant representation. However, as a matter of law and policy I cannot waive their individual rights to personal service. However, because you have electronically filed already, I will waive personal service on the City only.

I consent to a 2 week extension. Feel free to call if you need to address anything further!

Sent using OWA for iPhone

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**From:** Elliot Shields <[eshields@rothandrothlaw.com](mailto:eshields@rothandrothlaw.com)>

**Sent:** Tuesday, April 11, 2017 4:59:02 PM

**To:** Ash, Spencer L.

**Subject:** Barrett v. City of Rochester, et al., 17-CV-6160 (DGL)

Dear Mr. Ash,

As you know, I represent the Plaintiffs Lawrence Barrett and Shelise Colon in the above-referenced matter. I write to seek your consent for a two week extension in filing Plaintiffs' opposition to Defendants' 12(b)(6) motion to dismiss for failure to state a claim. Defendants' motion was served on April 8, so Plaintiffs' opposition is currently due April 22, and the new due date would be Friday May 6. The primary reason I need the extension is that I have a brief due this Friday to the Appellate Division, Second Department in a complicated appeal and cross-appeal of an order in an Article 78 litigation.

Also, because Defendants' 12(b)(6) motion was filed prior to Plaintiffs' service of the summons and complaint, can you please clarify whether you currently represent the individually-named defendant police officers at this time or just the City. And can you please let me know whether you are consenting to waive service of the summons and complaint on the City, and if you do represent the individually named defendants, whether you waive service of the summons and complaint on each of them as well.

Best regards,

Elliot Shields, Esq.

Roth & Roth, LLP

192 Lexington Avenue, Suite 802

New York, NY 10016

T - 212-425-1020

F - 212-532-3801

[eshields@rothandrothlaw.com](mailto:eshields@rothandrothlaw.com)

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